

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES E. BOSTIC
Plaintiff,
v.
STATE OF TENNESSEE, et al.
Defendants.

3 0 9 0 7 6 1
GENERAL DOCKET
No. 3:09-mc-0138
JUDGE HAYNES

O R D E R

Plaintiff, James Bostic, was found to be a prisoner who had accumulated four "strikes". Accordingly, an order (Docket Entry No. 3) was entered on July 7, 2009 denying the Plaintiff's application to proceed *in forma pauperis* and granting him thirty days in which to submit the full filing fee. At that time, Plaintiff was forewarned that, in the event he failed to comply with the instructions of the Court, the full filing fee would be assessed against him and this action would be dismissed. In re Alea, 286 F.3d 378, 382 (6th Cir. 2002).

The thirty day period has expired and the Plaintiff has not yet complied with the instructions of the Court by paying the filing fee. Instead, he has filed a Notice of Appeal (Docket Entry No. 4) along with an application to proceed on appeal *in forma pauperis* (Docket Entry No. 5).

The Clerk is directed to **FILE** the complaint. The Plaintiff is herewith **ASSESSED** the civil filing fee of \$350.00. Pursuant to 28 U.S.C. § 1915(b)(1)(A) and (B), the custodian of the Plaintiff's inmate trust account at the institution where he now resides is directed to submit to the Clerk of Court, as an initial partial payment, whichever is greater of:

(a) twenty percent (20%) of the average monthly deposits to the Plaintiff's inmate trust

account; or

(b) twenty percent (20%) of the average monthly balance in the Plaintiff's inmate trust account for the prior six (6) months.

Thereafter, the custodian shall submit twenty percent (20%) of the Plaintiff's preceding monthly income (or income credited to the Plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full filing fee has been paid to the Clerk of Court. 28 U.S.C. § 1915(b)(2).

This action is hereby **DISMISSED** for failure to comply with the instructions of the Court and for want of prosecution. The Clerk is directed to send a copy of this order to the Sheriff of Davidson County to insure that the custodian of Plaintiff's inmate trust account complies with that portion of the Prison Litigation Reform Act relating to the payment of the filing fee.

Because the Plaintiff has accumulated four "strikes" and there is no indication of imminent physical harm, the application to proceed on appeal *in forma pauperis* is **DENIED**. The Plaintiff is **GRANTED** thirty (30) days from the date of entry of this order on the docket in which to submit the full appellate filing fee of four hundred fifty five dollars (\$455) to the Clerk of this Court. Plaintiff is forewarned that, should he fail to comply with these instructions, the full appellate filing fee will be assessed against him and his appeal may be dismissed for want of prosecution.

Entry of this order shall constitute the final judgment in this case.

It is so **ORDERED**.

ENTERED this the 17 day of August, 2009.



WILLIAM J. HAYNES, JR.
United States District Judge